

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department of Telecommunications  
and Energy on its own motion pursuant to  
G.L.c. 159, §§ 12 and 16, into Verizon New England  
d/b/a Verizon Massachusetts' provision of Special  
Access Services

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D.T.E. 01-34

**RESPONSE OF  
XO MASSACHUSETTS, INC. AND CTC COMMUNICATIONS, CORPORATION  
TO VERIZON MOTION FOR PARTIAL RECONSIDERATION**

**I. INTRODUCTION**

In response to CLEC complaints of significant problems with Verizon's performance in provision and maintenance of special access service lines, the Department opened this proceeding in March, 2001. The ability of CLECs to serve their customers is materially and adversely affected by Verizon's provisioning and maintenance of such special access service lines. Vote and Order to Open Investigation, March 14, 2001, p. 2.

Verizon's service to its CLEC customers with respect to special access service lines is even more critical now than earlier this year because of Verizon's recent policy change that results in UNE Loop orders being denied or delayed thereby requiring reorders as special access services.<sup>1 2</sup>

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<sup>1</sup> Given an adequate and meaningful opportunity to describe these barriers to competition thrown up by Verizon, XO and CTC are confident that the Department will see Verizon's performance in this regard as a serious problem requiring remedy.

<sup>2</sup> A serious question exists whether such denials are supported by any real engineering limitations or are made just to hamper competitors.

In short, though the Department has concluded it has some jurisdictional limitations, it can and must act expeditiously to address at least the manifest problems with Verizon's in-state service regarding special access lines. In its Motion, Verizon takes yet another bite at the apple to bar or minimize any meaningful review of this problem. To unduly restrict the review of CLECs' experience with Special Access Services in Massachusetts will subvert any purpose and effect of this proceeding. At this point, the Department should review all available data to the extent necessary and to fashion remedies applicable to intrastate lines.

In its August 9, 2001 Order, the Department sought to strike a balance between: (a) its obligation to ensure reasonable service with respect to in-state lines and (b) avoiding action it viewed as preempted by FCC jurisdiction. There, the Department ruled that it would not regulate Verizon's performance on Federally jurisdictional lines. However, because of the smaller number of lines Verizon considers to be in-state and because the in-state and Federally jurisdictional lines are identical, the Department required Verizon to provide provisioning and maintenance data on Verizon's interstate lines. The Department required such additional information to obtain "an accurate view of Verizon's provision of special access services in the Commonwealth." Order August 9, 2001, p. 15. Further, that Order specified that the data on interstate lines "as evidence related to findings...regarding the reasonableness of intrastate special access services." The Department specifically stated that it would neither make findings nor rule on remedies as relevant to the interstate lines. *Id.*

## **II. RECONSIDERATION AND/OR CLARIFICATION IS NOT APPROPRIATE OR CONSISTENT WITH APPLICABLE STANDARDS**

Verizon's Motion generally provides an accurate statement of the Department's standards for grants of reconsideration or recalculation. However, Verizon cannot satisfy

those standards. First, Verizon argues that the Department made a mistake by stating it needed data on the Massachusetts interstate lines "in order to receive a statistically valid sample." Verizon's argument is pure semantics – there is no evidence of any material mistake. These commenters trust that the Department recognizes that the intrastate data was a complete set and not just a sample.<sup>3</sup> Presumably, the Department's reference to an adequate sample meant that the Department wanted to see a sufficient number of data upon which to make a determination, instead of basing its determination on a very small number of data. Because the Department knew it had the entire data set for intrastate lines, there is no mistake present. Such semantics are surely not a reasonable basis for clarification or reconsideration. Nor are other bases for reconsideration/clarification present: there is no revelation of previously unknown facts; there is no lack of notice and opportunity to prepare and present evidence and argument; and the Order is not silent or ambiguous in any way.

The Order is clear that the interstate data will be used "as evidence relevant to findings...regarding the reasonableness of intrastate special access services." Order, p. 15. The Department states twice that it will not apply findings or remedies to interstate services. Therefore, no inconsistency with the Department's findings on jurisdiction exist. The Department's use of the interstate line data as evidence relevant to intrastate lines does not constitute regulation of interstate lines. As to Verizon's claim that any discovery or cross examination upon the interstate data is extra-jurisdictional "investigation", one must look at the purpose of the review. Because the Department has limited itself and clearly is not going to fashion remedies on interstate lines, it is, in essence, reviewing that data only for informational

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<sup>3</sup> In fact, the language at page 15 of the Department's August 9, 2001 Order seems to show the Department's complete comprehension of this fact.

purposes. However, no data is worthy as a basis for administrative decisionmaking, unless discovery and cross examination is permitted. The Department, in its August 9, 2001 Order, reasonably concluded that its decisionmaking would be enhanced by review of the data on interstate special access service lines. That review and resultant decisionmaking could well be incomplete or incorrect unless the standard process of discovery and cross examination are employed. Likewise, CLECs should be allowed to present information about their experience with Verizon's special access service lines whether or not those lines are labeled intrastate or interstate.

A full review of the interstate data will maximize the Department's ability to assess the reasonableness of Verizon's performance with respect to intrastate lines. Where the Department is refraining from taking any action regarding interstate lines, some reasonable review of interstate data is not improper on jurisdictional grounds.

### **III. SUGGESTED USE OF INTERSTATE DATA**

As indicated above, the Department's plan to use the interstate data as evidence to assist in determining Verizon's performance on intrastate lines is reasonable where the intrastate and interstate lines are the same. With a greater number of provisioning and maintenance activity data points, the Department should be better able to assess any patterns or systemic shortcomings in performance. However, for any packaged presentation of data, a review is nearly meaningless if the reviewers cannot probe the methodology, assumptions and other factors affecting such presentation. Therefore, it is necessary that the Department allow discovery and cross examination of all data relating to Special Access Services lines in Massachusetts. The Department should consider Verizon's performance, as shown by all such

data, then make its ruling with respect to intrastate lines. Such consideration need not be protracted, but it must be sufficient for parties to assess and present evidence regarding Verizon's performance and for the Department to understand the problems and fashion appropriate remedies.

Because of the adverse effect on competition (which in turn necessarily affects the Commonwealth's economy) that results from Verizon's slow provisioning and repair of Special Access Service lines, the Department should now move forward quickly as described in this Response.

Respectfully submitted,

**XO MASSACHUSETTS, INC.**  
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By Their Counsel

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